

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

MARK BIROSHAK, et al.,

:

Plaintiffs,

:

:

vs.

: Case No.: C-1-01-0300

THE CITY OF HAMILTON, et al.,

:

Defendants.

:

\* \* \* \* \*

DEPONENT:

NEIL R. FERDELMAN

DATE:

SEPTEMBER 17, 2003

\* \* \* \* \*

TERESA A. MOORE,

COURT REPORTER

BARLOW REPORTING & VIDEO SERVICES  
333 Madison Avenue  
Covington, Kentucky 41011  
(859) 261-8440

**COPY**

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1 residence.

2 Q What information did you have regarding

3 the number or type of automatic weapons believed to

4 be at the Biroshak residence?

5 A I personally did not have that

6 information. The investigators working on the case

7 would have had that detailed information. I didn't

8 personally know.

9 Q Do you know whether that information came

10 up through the task force from a confidential

11 informant?

12 A No, sir, I don't.

13 Q Did the Department take any independent

14 steps to verify the allegation that there were

15 automatic weapons at the Biroshak home?

16 MR. WEISENFELDER: Objection. Go ahead.

17 A I personally don't have knowledge of

18 whether that occurred or did not occur.

19 Q Were you present at any time, at the scene

20 at 922 Vine, during the execution of the warrant?

21 A No, sir.

22 Q What is the protocol, if any, on pointing

23 weapons at subjects during the execution of a search

24 warrant?

25 A Our policy would allow for the use of

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1 pointing of a weapon until such time as any threat

2 has been verified as being not a threat, at any

3 time.

4 Q At the conclusion of the determination

5 that someone is not a threat, is the weapon supposed

6 to be lowered?

7 A Yes, sir.

8 Q Would it violate your policy to keep a

9 weapon trained on a child?

10 MR. WEISENFELDER: Objection. Go ahead.

11 A Again, it would be dependent on whether or

12 not there were other threats present in the room,

13 for example, or in the immediate vicinity that may

14 still be, in fact, a threat.

15 Q Would it be consistent with Hamilton

16 policy to keep a weapon trained on an obviously

17 unarmed person?

18 A Normally, in the context of your question,

19 no. But, again, I would think that there is a

20 consideration for the general scope of the room and

21 if, in fact, there may be other threats that are

22 present nearby.

23 Q You'd agree with me, wouldn't you, that a

24 child sleeping in a bed is not an obvious threat?

25 MR. WEISENFELDER: Objection. Go ahead.

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1 A On its face, no. But my experience would

2 tell me that it's important to verify that there is,

3 in fact, no one else in the bed or under the bed or

4 in an immediate vicinity that could pose a threat.

5 Q If a child, 3-year-old child, is in a room

6 by herself unarmed, are there additional factors to

7 determine whether she presents a threat?

8 A Yes, a thorough and complete search of her

9 room to insure that there wouldn't be an armed

10 individual or a threatening individual that could be

11 hiding that had not yet been detected.

12 Q Do you know whether your officers

13 participated in the search at the Biroshak

14 residence as well as the securing of the premises?

15 A Independently, at this juncture, I don't

16 recall whether or not they did.

17 Q What type of munitions or arms does the

18 Hamilton SWAT team use?

19 MR. WEISENFELDER: At 922 Vine?

20 MR. GREENWOOD: At 922 Vine.

21 A I don't have knowledge of the exact

22 weapons that were deployed there on that day. I

23 can't tell you specifically what they had.

24 Q In May --

25 A The SWAT commander will be able to.

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1 Q In May of 1999, what types of weapons were

2 used by the SWAT team, generally? What did they

3 have available?

4 A I'm not certain that I will include each

5 and every weapon that they have available. Normally

6 they are armed with .45 caliber semi-automatic

7 handguns. They had a variety of other

8 semi-automatic weaponry available to them.

9 Q Does that include semi-automatic rifles?

10 A Yes, sir.

11 Q Do you know the caliber and the

12 manufacturer?

13 A My recollection is that they are Benelli.

14 MR. WEISENFELDER: Scott, I may -- you're

15 certainly free to ask these. But I think there

16 are going to be others today that you're going

17 to depose today that are going to have a much

18 more intimate knowledge as to exactly what they

19 possess.

20 THE WITNESS: The SWAT commander, who is

21 right after me, will list them right off.

22 BY MR. GREENWOOD:

23 Q And flash rounds of some sort?

24 A Yes. They use that as a diversionary

25 device. It's not actually a weapon.